



TIPS FOR LAWYERS

VISITATION

What does the law say about visitation between parents and children?

Children in DCF custody have a right to regular visitation with their parents. Conn. Gen. Stat. § 17a-10a provides that DCF facilitate visitation between a child and her parents “**as frequently as reasonably possible**, based upon consideration of the **best interests of the child**, including the age and developmental level of the child, and shall be sufficient in number and duration to ensure continuation of the relationship.”

Do children in DCF custody have an automatic right to visitation with their siblings?

Conn. Gen. Stat. § 17a-10a also provides that sibling visitation occur whenever there is an established sibling relationship. The statute requires that DCF, “based upon consideration of the best interests of the child, ensure that such child has access to and visitation rights with such sibling throughout the duration of such placement. In determining the number, frequency and duration of such visits, the commissioner shall consider the best interests of each sibling, given each child's age and developmental level and the continuation of the sibling relationship.”

NOTE: In June, 2012, the Connecticut legislature passed Senate Bill 156, effective October 1, **2014**, providing siblings the right to **weekly** visits so long as they live within 50 miles of each other and such visitation is not contrary to their interests.

What are the Social Worker's Obligations to Provide Visitation?

DCF Policy Manual § 34-10-7.1 provides that the social worker must ensure that the child has visitation with his siblings and parents as “frequently as reasonably possible” and in consideration of the child's best interests.

Does the family or sibling visitation plan have to be in writing?

Yes. Conn. Gen. Stat. § 17a-10a provides that all factors related to decisions about visitation must be included in the DCF Case Plan. Furthermore, the statute provides that if DCF determines that visits or the requested frequency of visits are not in the best interests of the child, DCF “shall include the reasons for such determination in the child's plan of treatment.”

Additionally, DCF Policy Manual § 34-10-7.1 mandates that a detailed visitation plan be included in the Child and Family Case Plan. Specifically, the Case Plan must document the following:

- all factors related to decisions made by DCF regarding visitation between children, parents, and siblings;

- whether the Department has determined that visitation is not in the child's best interest, and, if so, the specific reasons that led to the determination, or;
- if the Department determines that it is not in the child's best interests to provide the number, frequency, or duration of visits requested by the child's attorney or *guardian ad litem* (GAL), the specific reasons that led to the determination.

The case plan reviewer shall address the issue of visitation during the Case Planning Conference (TPC) and at subsequent Administrative Case Reviews (ACR) to ensure that visitation decisions are properly carried out and documented in the case plan.

How can a lawyer enforce the child's right to visitation?

First, a lawyer should make sure that the child or parent's Case Plan includes the required visitation information. The Case Plan should detail how many visits are in the child's best interests, and if possible, what the basis for that determination is. This will help prevent visitation from being cut down due to invalid reasons, such as a lack of funding for the visits, or lack of drivers or supervisors. The only factors that should determine the visitation plan are the statutorily identified factors related to the best interest of the child and the continuation of the parent/child relationship. Remember that a lawyer is entitled to a copy of the Case Plan. See Conn. Gen. Stat. § 17a-28(2) and R.C.S.A. § 17a-15-3.

Second, a lawyer may be able to obtain a court order regarding visitation (see NOTE OF CAUTION below). Conn. Gen. Stat. § 17a-16(i) provides that "Any child or youth aggrieved by a violation of subsections (a) to (h), inclusive, of this section, *may petition the Superior Court* for the venue district provided in section 46b-142 within which the child or youth is or resides for appropriate relief.") §17a-16(b) provides that each child is entitled to "treatment ... consistent with his treatment plan." Because the treatment plan must include the visitation plan, any violations related thereto may be brought before the court. The treatment plan should then be used as a court exhibit. See also In re Leighton V., 1998 WL 738057 (holding that child not required to exhaust administrative remedies prior to filing motion regarding placement decision; and specifically noting that "[a]ny child placed with DCF may petition the court for appropriate relief" pursuant to the plain terms of Conn. Gen. Stat. § 17a-16(i); see also In re Christopher M., 2008 WL 249744, *2+, 44 Conn. L. Rptr. 782+ (Conn. Super. Jan 04, 2008) (agreeing with Leighton V court's discussion regarding the jurisdiction of the court over "well-being motions" and determining that the court does indeed have jurisdiction to decide visitation motions. Court rejected DCF's argument that the agency has *primary* jurisdiction over these issues thereby mandating that parent exhaust his administrative remedies prior to seeking judicial relief. Court engages in a lengthy statutory/regulatory analysis to support its finding.)

Conn. Gen. Stat. § 46b-129(k) provides courts with authority to direct the provision of services when the court has approved a permanency plan of reunification.

Conn. Gen. Stat. § 46b-121 provides courts broad power to issue orders directing anyone with a "legal duty to a child" to take an action that promotes the welfare of that child.

NOTE OF CAUTION

At least one trial court has interpreted Conn. Gen. Stat. § 17a-10a as evidence of the legislature's entrustment of visitation decision-making to DCF and therefore a directive to the courts to defer to agency decision-making and dispute resolution. *In re Justin F.*, 2008 WL 5505448, No. N05CP04004754D, No. N05CP04004755D, 2010 WL 5158353 (Conn. Super. Ct. Oct. 28, 2008) *affirmed on appeal* 116 Conn. App. 83, 976 A.2d 707 (2009). Although the trial court decision in *Justin F.* was reviewed and affirmed by the Appellate Court, the Court merely held that the trial court did not err when it deferred future decisions regarding visitation to DCF, where there had already been numerous court reviews and orders regarding visitation. 116 Conn. App. 83, 976 A.2d 707 (2009). The appellate decision contains only a few short paragraphs regarding this issue and does not contain any analysis or holding which would preclude the

juvenile court from exercising plenary authority to issue orders that promote the welfare of DCF committed children. However, the *Justin F.* decision does not address the child's right to seek direct relief from the juvenile court, or the breadth of the juvenile court's authority to issue orders that promote the welfare of children. Accordingly, it may be argued that this case does not preclude the child from exercising his or her right to seek a visitation order.

How can a lawyer increase the frequency of visitation?

Pursuant to Conn. Gen. Stat. § 17a-10a, visitation must occur as frequently as reasonably possible, based upon consideration of the best interests of the child. The Case Plan for the child and family should include a detailed visitation plan. The Plan should address all factors related to the best interests of the child.

A visitation plan should contemplate the developmental needs of the child as well as the child's specific needs.

Remember, that a good visitation plan can and should change as the case progresses. If a parent is making changes for the better, visitation should increase as well.

What can you do if DCF isn't providing visits as often as your client would like?

- Request the visits from DCF. You should do this in writing.
- If you aren't able to obtain a satisfactory visitation schedule, you can request an administrative hearing at DCF or file a motion for visitation in Juvenile Court.

Under what circumstances can DCF terminate visitation?

DCF Policy Manual § 34-10-7.1 provides that in any case where visitation is ongoing, but it has been determined not to be in the child's best interests, the Department shall file a Motion to Suspend Visitation prior to ceasing visits. If an emergency arises and the Department feels that it has to suspend visitation immediately, this same policy provision provides that DCF will file an *ex parte* Motion for Emergency Relief.

Any change to the visitation plan should be documented in the Case Plan and reviewed administratively at DCF with the input of counsel.

Are parents and children entitled to privacy during visitation?

The Case Plan should document whether the visits are to be supervised or unsupervised and where visits need to take place. The Plan should indicate the reasons for these decisions and how the plan advances the best interests of the child and promotes the continued parent/child/sibling bond. Additionally, DCF Regulation § 17a-145-83 provides that "children shall have a place to receive visitors in privacy."

Legal Resources:

- 1) ASFA: ASFA requires that DCF make reasonable efforts to achieve the permanency plan. One should argue that visitation is a necessary part of reasonable efforts when the plan is reunification.
- 2) CGSA 17a-10a: This state law addresses visitation requirements for children in DCF care.